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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CIAMPI,)	NO. C09-02655 JDF (PVT)
)	
Plaintiff,	)	JOINT CASE MANAGEMENT
	)	STATEMENT; DECLARATION
v.	)	OF STEVEN A. SHERMAN IN
	)	SUPPORT OF REQUEST FOR
CITY OF PALO ALTO, a government	)	TELEPHONIC APPEARANCE
entity; LYNNE JOHNSON, an individual;)	
CHIEF DENNIS BURNS, an individual;	)	Date: December 4, 2009
OFFICER KELLY BURGER, an individual;	)	Time: 10:30 a.m.
OFFICER MANUEL TEMORES, an	)	Ctrm: 3
individual; OFFICER APRIL WAGNER, an)	
individual; AGENT DAN RYAN;	)	[REQUEST FOR
SERGEANT NATASHA POWERS,	)	TELEPHONIC APPEARANCE]
individual,)	
)	
Defendants.)	
_____)	

Plaintiff JOSEPH CIAMPI (“CIAMPI” or “Plaintiff”) and CITY OF PALO
 ALTO, LYNNE JOHNSON, CHIEF DENNIS BURNS, OFFICER KELLY
 BURGER, OFFICER MANUEL TEMORES, OFFICER APRIL WAGNER,
 AGENT DAN RYAN, SERGEANT NATASHA POWERS, (collectively
 “Defendants”) jointly submit this Case Management Statement pursuant to the
 Court’s Standing Order.

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1 **1. Jurisdiction and Service.**

2 Plaintiff brings this action against Defendants to redress the deprivation of
3 rights secured him by the Fourth Amendment, Fourteenth Amendment, Due Process
4 Clause and Equal Protection Clause of the US Constitution, 42 U.S.C. § 1983, and
5 California common law.

6 This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §§
7 1331, 1332, and 1343(a)(3), and 42 U.S.C. § 1983. Plaintiff also invokes
8 supplemental jurisdiction over Plaintiff's state law claims against Defendants for
9 common law violations pursuant to 28 U.S.C. § 1367 as the common law claims
10 form part of the same case or controversy.

11 No issues exist with respect to personal jurisdiction or venue. All Parties have
12 been served.

13 **2. Facts:**

14 **A. Plaintiff's Statement**

15 On the morning of March 15, 2008, Plaintiff Ciampi was sleeping in his
16 vehicle, a 1985 Dodge Ram Van, which was parked on Lincoln Street in a residential
17 neighborhood in Palo Alto, California. That morning, a Palo Alto resident, Ken
18 Alsman, called the Palo Alto Police Department to complain about a man sleeping in
19 his van outside of his home. Sleeping in a vehicle, as Plaintiff was doing, does not
20 violate any law or ordinance.

21 Defendants Wagner, Temores and Burger responded to the call. About 10:00
22 a.m. that morning, Wagner and Temores approached Plaintiff's vehicle. Defendant
23 Wagner unlawfully began to open the rear side door, without first knocking on the
24 door of the vehicle, or requesting permission to enter. Plaintiff promptly closed the
25 door from inside the van and locked it.

26 Defendant Wagner demanded that Plaintiff exit the vehicle. Plaintiff
27 rightfully refused. Defendants Temores and Wagner told the Plaintiff that he was in
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1 violation of a City Municipal Code. Plaintiff was unaware of any such Municipal
2 Code. Plaintiff stated to Defendants Temores and Wagner that no such ordinance
3 existed. Plaintiff continued to rightfully refuse to exit the vehicle.

4 To coerce Plaintiff out of the vehicle, Defendant Wagner and Defendant
5 Temores threatened to call a tow truck unless Plaintiff exited the vehicle.
6 Defendants Wagner and Temores then unlawfully pretended to make a radio call for
7 a tow truck. Believing that Wagner and Temores had called a tow truck, Plaintiff
8 opened the van door. He told Defendants Wagner and Temores that he was not in
9 violation of any Law, Ordinance or Municipal Code, and that Defendants had no
10 reason to make him exit his vehicle. Plaintiff demanded to know what ordinance he
11 was violating. Defendants Temores and Wagner refused to tell Plaintiff specifically
12 what ordinance he was allegedly violating. Instead, Officer Wagner repeatedly
13 accused Plaintiff of being in violation of a "Sleeping Ordinance", but no such
14 ordinance existed.

15 Defendant Temores falsely accused Plaintiff of being a heroin addict, which
16 Plaintiff vehemently denied. Defendant Burger then arrived at the scene and placed
17 Plaintiff under arrest without probable cause.

18 Plaintiff used a cell phone in an attempt to call for help when Defendants
19 Burger and Temores drew and threatened to use their Taser guns on Plaintiff.
20 Defendants then unlawfully yanked Plaintiff out of the van.

21 Plaintiff was standing still on the sidewalk facing Defendant Burger.
22 Defendant Burger was aiming the laser dot from Defendant's Taser gun into
23 Plaintiff's eyes. Without warning, Defendant Burger fired his Taser gun at the
24 Plaintiff's face while Plaintiff had his hands in the air. Plaintiff blocked one of the
25 Taser probes with his left arm, and the top of the Taser probe lodged into the left arm
26 just below Plaintiff's wrist. The bottom Taser probe grazed Plaintiff's chin causing a
27 small cut. Defendant Burger proceeded to unlawfully shock Plaintiff repeatedly with
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1 electricity although Plaintiff was not resisting or fleeing. Plaintiff pleaded with
2 Defendant Burger to stop shocking Plaintiff, however Defendant Burger would not
3 stop.

4 In extreme pain from the electrical charge flowing into Plaintiff's body and in
5 fear of incurring great bodily harm and/or death, Plaintiff attempted to dislodge the
6 Taser gun from Defendant Burger's hand. The electrical shock ceased and
7 Defendants Wagner and Temores unlawfully grabbed Plaintiff from each side.
8 Plaintiff did not resist or flee. Then, without any provocation, Defendant Burger
9 pulled the trigger on his Taser gun sending an electrical charge into Plaintiff's body.
10 Out of fear of serious bodily injury and or death, Plaintiff attempted to flee from
11 Defendants Wagner, Temores and Burger. Defendant Temores deployed and
12 activated his Taser gun on Plaintiff's body at the same time as Defendant Burger.
13 Defendant Temores attempted to shock Plaintiff in the genitals but, instead, hit him
14 in the leg and groin area. Defendants Temores and Burger shocked Plaintiff with
15 their Taser guns for approximately thirty seconds, despite Plaintiff pleading with
16 Defendants Temores and Burger to stop. Defendants Temores, Burger and Wagner
17 then proceeded to kick and hit Plaintiff. Defendant Wagner struck Plaintiff with her
18 fist. Defendant Burger threw Plaintiff onto the ground. Defendant Burger then
19 unlawfully placed handcuffs on Plaintiff.

20 Plaintiff was wrongfully arrested for felony assault on a police officer and
21 resisting arrest. Plaintiff's charges were later amended to felony resisting arrest.

22 In order to conceal the unlawful acts committed by Defendants Burger,
23 Temores, and Wagner, and to perpetuate the malicious prosecution of Plaintiff,
24 Sergeant Powers intentionally and knowingly submitted a falsified and fabricated
25 report containing the deployment and activation information from Defendant's
26 Burger's and Temores' Taser guns to the Santa Clara County District Attorney with
27 the intent of having Plaintiff falsely convicted of a crime.
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1 In order to conceal the unlawful acts committed by Defendants Burger,
2 Temores and Wagner, and to falsely and wrongfully incriminate Plaintiff,
3 Defendants Temores and Burger gave false testimony under oath during Plaintiff's
4 case (*People v. Ciampi*, case no. BB833050).

5 In order to conceal the unlawful acts committed upon Plaintiff and to
6 perpetuate the malicious prosecution of Plaintiff, Defendants engaged in a pattern of
7 withholding and suppressing evidence from the Plaintiff and the Court.

8 In order to conceal the unlawful acts committed upon Plaintiff and to
9 perpetuate the malicious prosecution of Plaintiff, Defendants unlawfully altered four
10 audio/video recordings that captured the incident and two Taser gun Data File reports
11 that recorded the deployment and activation information of the two Taser guns.

12 In order to conceal the unlawful acts committed upon Plaintiff and to perpetuate the
13 malicious prosecution of Plaintiff, Defendant Temores removed evidence, (Taser
14 cartridge, probes, wires, blast doors and aphids) from the crimes scene without
15 securing the evidence into the property room or documenting the evidence in his
16 report.

17 On December 17, 2008, Judge Thang Barrett of the Superior Court of the
18 State of California, County of Santa Clara, heard Plaintiff's case (*People v. Ciampi*,
19 case no. BB833050). Judge Barrett dismissed all charges against Plaintiff. Judge
20 Barrett specifically found that: (1) Plaintiff did not violate an ordinance; (2) Police
21 Officers accused Plaintiff of a violation of a nonexistent ordinance; (3) Police
22 Officers resorted to an unlawful "ruse" to coerce defendant to come out of his van
23 after he expressly refused to exit; and (4) Plaintiff had a right to refuse to talk to the
24 Police Officers. Judge Barrett further held that a finding that the ruse was unlawful
25 was determinative of the case. As such, the Court did not address the remaining
26 issues regarding excessive or unreasonable force and obstruction of justice by
27 defendants.
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1 On or about September 12, 2008, Plaintiff notified the City, pursuant with the
 2 California Tort Claims Act, Government Code § 900, *et seq.*, of the facts underlying
 3 Plaintiff's claims against the City and its agents. On or about October 15, 2008, the
 4 City rejected Plaintiff's claims and offered no compensation in response. As a result
 5 of the pending criminal charges, Plaintiff's statute of limitation was tolled
 6 (California Government Code 945.3).

7 **B. Defendants' Statement**

8 Defendants deny any and all alleged wrongdoing as set forth in Plaintiff's
 9 previously filed Case Management Statement, or the Statement of Facts above.
 10 Defendants acknowledge the lack of a sleeping ordinance and the dismissal of the
 11 criminal case although Defendants adamantly disagree with the basis or reasoning
 12 behind the dismissal.

13 Officers on scene did engage in a consensual contact with Plaintiff until he
 14 became threatening and aggressive. Attempts were then made to control him.
 15 Plaintiff actively resisted the officers' actions. Plaintiff unlawfully hit, kicked and
 16 struck the officers. The officers sustained physical injuries as a result of Plaintiff's
 17 assaultive conduct.

18 Plaintiff was not excessively tasered nor was excessive force used to control
 19 him. In fact, based on Plaintiff's assaultive and combative behavior, the officers
 20 exercised great restraint. Plaintiff was not tased for over 30 seconds. No evidence
 21 was altered. No evidence was intentionally destroyed.

22 Plaintiff attacked and injured the officers.

23 **3. Legal Issues:**

24 Plaintiff alleges seven causes of action against Defendants as follows:

25 *First cause of action:* Violation of Civil Rights, 42 U.S.C. §1983, Against All
 26 Defendants. Plaintiff alleges that Defendants' conduct violated Plaintiff's rights as
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1 guaranteed by the First Amendment, Fourth Amendment, Fourteenth Amendment,
2 Due Process Clause and Equal Protection Clause of the United State Constitution.

3 *Second cause of action:* Assault and Battery against the police officers and the
4 City. Plaintiff alleges that the police officers maliciously seized, battered, and
5 assaulted. Plaintiff further alleges that the police officers were acting pursuant to the
6 policies and practices of the City.

7 *Third cause of action:* Intentional infliction of emotional distress against all
8 Defendants. Plaintiff has alleged that as a result of Defendants' intentional conduct,
9 he has suffered severe pain from, *inter alia*, being shocked with electricity, being
10 kicked and hit, and suffering puncture wounds from the taser, scrapes and bruises to
11 arms and face. Plaintiff also alleges that he has suffered and continues to suffer
12 injury to his reputation, severe emotional distress, embarrassment, humiliation,
13 anxiety, fear and anguish, and now lives in constant fear for his safety and of being
14 maliciously prosecuted by Defendants.

15 *Fourth cause of action:* Negligence against all Defendants. Plaintiff has
16 alleged that the police officers breached their duty by negligently failing to ascertain
17 that the situation did not permit the Police Officers to use force, and by unreasonably
18 searching and seizing Plaintiff without probable cause.

19 *Fifth cause of action:* Defamation against Defendants Burns, Johnson, Ryan
20 and the City. Plaintiff has alleged that Defendants caused to be published false and
21 unprivileged statements tending directly to injury Plaintiff's reputation.

22 *Sixth cause of action:* Malicious prosecution against all Defendants. Plaintiff
23 has alleged that Defendants wrongfully brought charges against Plaintiff (*People v.*
24 *Ciampi*, case no. BB833050). Further, Defendants wrongfully initiated and
25 continued the case knowing that there were no grounds to support the case, and with
26 the intent to harm Plaintiff.

1 *Seventh cause of action:* False arrest and false imprisonment against the police
2 officers and the City. Plaintiff has alleged that Defendants intentionally and
3 unlawfully violated Plaintiff's personal liberty by confining Plaintiff against
4 Plaintiff's will through exercise of force, as well as with the express and implied
5 threat of force. Defendants' intentional and unlawful confinement of Plaintiff was
6 not privileged. The confinement was for an appreciable period.

7 Defendants dispute all causes of action. Defendants believe that their actions
8 were reasonable and that defenses and immunities will defeat the causes of action.

9 **4. Motions:**

10 There are currently no motions pending in this matter. Plaintiff anticipates
11 filing a motion to amend the Complaint to add additional defendants. If Plaintiff
12 requires more than seven hours of deposition time from a witness, or if Plaintiff
13 needs to take more than ten deposition, and Defendants will not stipulate, Plaintiff
14 will file a motion for leave to take additional depositions or additional deposition
15 time.

16 Defendants anticipate filing a motion for summary judgment or summary
17 adjudication. Should the matter proceed to trial, Defendants anticipate filing a
18 motion to bifurcate/trifurcate.

19 **5. Amendment of Pleadings:**

20 Plaintiff is considering amending the Complaint to add additional Defendants.
21 Additional discovery is required. As soon as Plaintiff ascertains the identity of the
22 additional culpable parties, Plaintiff will promptly move to amend.

23 Defendants do not anticipate amending any additional pleadings, however,
24 such will be governed by the filings of Plaintiff. However, based on the injuries to
25 the officers, Defendants are contemplating a cross-complaint.

1 **6. Evidence Preservation:**

2 The parties have taken measures to preserve evidence in this action, including
3 any electronic data.

4 **7. Disclosures:**

5 Plaintiff exchanged his Initial Disclosures identifying witnesses, evidence
6 known to Plaintiff on October 20, 2009. The Parties have agreed to produce
7 documents identified in the Initial Disclosures on that same date.

8 Defendants exchanged documents known to them with Plaintiff on October
9 20, 2009. There is apparently an issue with a CD provided and a new copy is being
10 sought and will be provided to counsel.

11 **8. Discovery:**

12 Plaintiff anticipates engaging in the following discovery: (1) depositions of all
13 of the defendants; (2) written discovery to defendants; (3) deposition of third parties
14 as necessitated by future discovery; (4) subpoenaing documents from third parties;
15 (5) expert discovery; and (7) deposition of the City's PMK re the chain of custody
16 for MAV / Taser videos.

17 Defendants anticipate engaging in the following discovery: 1) the deposition
18 of Plaintiff and all witnesses; 2) written discovery to Plaintiff; 3) subpoenaing
19 documents from third parties and depositions related thereto; 4) expert discovery.

20 **9. Class Actions:**

21 This is not a class action.

22 **10. Related Cases:**

23 The parties are not aware of any related cases or proceedings currently
24 pending. The underlying criminal action, *People v. Ciampi*, case no. BB833050, has
25 concluded.

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11. Relief:

Plaintiff alleges the following damages according to proof: (1) For compensatory (special) damages according to proof, including, without limitation, lost/unpaid wages; (2) For general damages, including without limitation, for mental and emotional distress according to proof; (3) For punitive damages according to proof; (4) For an award of interest, including prejudgment interest, at the legal rate; (5) For an award of attorneys' fees pursuant to, without limitation, 42 U.S.C. §1988; (6) For costs of suit incurred; and (7) For such other and further relief as the Court may deem just and proper.

Defendants will seek dismissal of the case in its entirety. If successful, Defendants will attempt to recoup any and all costs, fees and expenses on behalf of the City and its citizens.

12. Settlement and ADR:

The parties have met and conferred regarding possible ADR process and have agreed to court-referred mediation.

13. Consent to Magistrate Judge for All Purposes:

The parties decline to have all further proceedings in this case conducted by a magistrate judge.

14. Other References:

The parties believe this case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues:

The parties do not anticipate the narrowing of issues.

16. Expedited Schedule:

The parties do not believe this case is appropriate for handling on an expedited basis with streamlined procedures.

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17. Scheduling:

Plaintiff proposes the following schedule:

Designation of experts	May 10, 2010
Discovery cutoff	June 29, 2010
Hearing of dispositive motions	August 9, 2010
Pretrial Conference	September 13, 2010
Trial	October 4, 2010

Based on other currently pending matter, Defendants propose the following schedule:

Defendants propose the following schedule:

Designation of experts	July 12, 2010
Discovery cutoff	September 13, 2010
Hearing of dispositive motions	November 8, 2010
Pretrial Conference	December 6, 2010
Trial	January 11, 2011

18. Trial:

The parties have requested a jury trial. The parties anticipate the length of the trial will be approximately 10 days, including jury selection.

19. Disclosure of Non-Party, Interested Entities of Persons:

The parties are unaware of any non-party, interested entities or persons.

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DECLARATION OF STEVEN A. SHERMAN

I, Steven A. Sherman, declare and state as follows:

1. I am the attorney of record for the Defendants herein.

2. I am a partner with the law offices of Ferguson, Praet & Sherman, and
licenced to practice in both the state and federal court systems. If called upon to do
so, I could and would testify in conformance with the statements made herein.

3. As noted above, I am respectfully requesting that I be allowed to
appear telephonically on December 4, 2009.

4. Given the distance and a prior obligation, the rescheduling of the Case
Management Conference has me in a bit of travel quandary. I am the Conference
Commissioner for Pop Warner Football and Cheer, Orange/Los Angeles counties.
The nationwide playoffs are scheduled to begin December 4, 2009, through
December 12, 2009, in Florida. This is a volunteer position and I had previously
been scheduled to manage/work these playoff games prior to this hearing being reset
to December 4, 2009. My flight leaves for Florida the evening of December 4, 2009.
It would be very difficult to fly to San Jose, return home and then fly out to Florida
the same evening. I did check into flying directly from San Jose to Florida, however,
there were no flights available that cost-wise I would not deem overly burdensome to
the Pop Warner organization.

As such, I respectfully request that a telephonic appearance be allowed given
these unique circumstances.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 25th day of November 2009, in Santa Ana, California.

/s/ Steven A. Sherman
Steven A. Sherman
Declarant

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Cathy Sherman, employed in the aforesaid County, State of California; I am over the age of 18 years and not a party to the within action. My business address is 1631 East 18th Street, Santa Ana, California 92705-7101.

On November 25, 2009, served the **JOINT CASE MANAGEMENT STATEMENT; DECLARATION OF STEVEN A. SHERMAN IN SUPPORT OF REQUEST FOR TELEPHONIC APPEARANCE** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Andrew F. Pierce
Stacy North
PIERCE & SHEARER LLP
2483 E. Bayshore Road, Suite 202
Palo Alto, CA 94303
apierce@pierceshearer.com
stacy@pierceshearer.com

____ (By Mail) I placed such envelope for deposit in accordance with office practice, sealed, with postage thereon fully paid and the correspondence to be deposited in the United States mail at Santa Ana, California on the same day.

XXX (By e-filing) The above noted individuals are registered with the Court to receive notice of electronically filed documents. Per ECF rules, hard copies must be served only on parties who are not set up for electronic notification.

____ (By Personal Service) I caused such envelope to be delivered by hand to the office of the addressee.

XXX (Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 25, 2009, at Santa Ana, California.

/s/ Cathy Sherman
Cathy Sherman